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No. 07-1104

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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

STEPHANIE PEETE,

Petitioner,

v.

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Has Petitioner presented compelling reasons to grant the Petition for a Writ of Certiorari where the Sixth Circuit Court of Appeals, on initial review and on rehearing, and applying settled Fourth Amendment authority, held that Plaintiff failed to plead facts sufficient to bring this lawsuit within the confines of the Fourth Amendment?

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STATEMENT OF THE CASE

On December 16, 2005, all Defendants filed a motion to dismiss all of the federal claims in Plaintiff's complaint. (Mot. to Dismiss, Resp. App. at 1a.) The district court denied Defendants' motion to dismiss in its entirety. (Order, Pet. App. at 15a.) The individual Defendants (the Respondents to this Petition) filed an immediate appeal of the denial of qualified immunity. (Op'n, Pet. App. at 4a.)

The Sixth Circuit Court of Appeals reversed the order of the district court and remanded with instructions to grant qualified immunity to the individual Defendants. *Peete v. Metro. Gov't*, 486 F.3d 217, 219, 223 (6th Cir. 2007). Plaintiff filed a petition for rehearing and rehearing en banc. (Order Denying Pet. for Rehearing, Pet. App. at 18a.) Upon consideration by the original panel, the Sixth Circuit again held that Plaintiff had not stated a Fourth Amendment claim and, thus, denied Plaintiff's petition. (*Id.*, Pet. App. at 21a-22a.) Plaintiff then filed this petition for a writ of certiorari.

STATEMENT OF FACTS

The facts as alleged in the complaint are as follows. On July 15, 2004, at approximately 9:00 p.m., Mr. Federico Becerra's grandmother called 911 requesting medical attention for Mr. Becerra, who Plaintiff/Petitioner alleges was having a seizure due to his epilepsy. (Compl. ¶ 6, Pet. App. at 25a.) Defendants/Respondents, who are firefighters, paramedics, and emergency medical technicians ("EMTs") for the Metropolitan Government of Nashville and Davidson

County, Tennessee ("Metropolitan Government"), responded to the call. (*Id.* ¶ 8, Pet. App. at 25a.)

Petitioner alleges that Respondents placed Mr. Becerra in a prone position; used their bodies to apply weight and pressure to Mr. Becerra's head, neck, shoulders, arms, torso, and legs "in an attempt to prevent [Mr. Becerra] from moving"; and tied his hands and ankles behind his back. (*Id.* ¶¶ 9-11, Pet. App. at 25a.) Petitioner further contends that Respondents failed to ensure that Mr. Becerra was breathing while Respondents restrained him, failed to ensure that he had a clear passage to breathe, and failed to monitor his condition. (*Id.* ¶¶ 14-15, Pet. App. at 26a.) Petitioner alleges that Mr. Becerra died as a result of Respondents' actions and/or inactions. (*Id.* ¶ 19, Pet. App. at 27a.)

SUMMARY OF ARGUMENT

Petitioner has not identified any "compelling reasons" why the Court should grant her petition for a writ of certiorari. Petitioner does not rely on any conflict among circuits and has not demonstrated that the opinion of the Sixth Circuit Court of Appeals conflicts with any opinions of this Court. Rather, Petitioner merely disputes the Sixth Circuit's application of well-established law in this case, which does not constitute a compelling reason for granting her petition. *See* S. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law.").

As the Sixth Circuit properly held, Petitioner has not stated a viable Fourth Amendment claim. At most,

Petitioner alleged that Respondents, acting in the course and scope of their employment as emergency medical providers, did not provide proper or sufficient medical attention to Mr. Becerra. In the absence of any case law providing Fourth Amendment liability under similar circumstances, and particularly in the absence of any allegations of a conscious, expressed lack of consent, Petitioner's "medical malpractice" allegations do not constitute a Fourth Amendment claim.

REASONS FOR DENYING THE PETITION

I. APPLYING WELL-ESTABLISHED LAW, THE SIXTH CIRCUIT PROPERLY REJECTED PETITIONER'S STRAINED ARGUMENT THAT THE FOURTH AMENDMENT APPLIES TO THIS CASE

The Sixth Circuit, applying well-established authority, properly held that Petitioner's complaint failed to state a Fourth Amendment claim. No federal court has held that the Fourth Amendment applies where emergency medical personnel, providing solicited medical care to a patient, restrain the patient during the course of the treatment. Accordingly, Petitioner has failed to identify any compelling reason why this Court should grant her petition.[1]

The initial inquiry in a Fourth Amendment case alleging an unreasonable seizure is whether the

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[1] It should be noted that Petitioner has not petitioned this Court regarding the Sixth Circuit's grant of qualified immunity on Plaintiff's substantive due process claim against Respondents.

government actor's conduct constituted a "seizure" in the first place. *See Scott v. Harris*, 127 S. Ct. 1769, 1776 (2007) (citing *Brower v. County of Inyo*, 489 U.S. 593, 595 (1989)). Additionally, the question of whether an individual has been "seized" within the meaning of the Fourth Amendment is an objective one. *Brigham City, Utah v. Stuart*, 547 U.S. 398, 404 (2006). To bring her complaint within the confines of the Fourth Amendment, Petitioner must affirmatively allege facts from which a court could conclude that, objectively, Mr. Becerra had been seized. Petitioner failed to do so.

This case is wholly distinguishable from the types of situations contemplated by this Court's seminal excessive force cases — *Tennessee v. Garner*, 471 U.S. 1 (1985) and *Graham v. Connor*, 490 U.S. 389 (1989). *See Graham*, 490 U.S. at 395 ("Today we make explicit what was implicit in *Garner*'s analysis, and hold that *all* claims that ***law enforcement officers*** have used excessive force — deadly or not — in the course of an ***arrest, investigatory stop, or other 'seizure'*** of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard, rather than under a 'substantive due process' approach." (second and third emphasis added)). In *Graham*, this Court explain d that the Fourth Amendment "provides an explicit textual source of constitutional protection against [certain kinds of] physically intrusive governmental conduct." *Id.*

The Fourth Amendment is applied exclusively in the context of law enforcement or quasi-law enforcement type activities, such as investigation or community protection. *See, e.g.*, *Scott*, 127 S. Ct. at 1776; *Michigan v. Clifford*, 464 U.S. 287 (1984); *Michigan v. Tyler*, 436

U.S. 499 (1978). This is not to say that EMTs and paramedics cannot be held liable under the Fourth Amendment, and the Sixth Circuit did not hold as such in this case. However, Petitioner has neither alleged facts to bring this case within the general parameters of the Fourth Amendment nor referenced even one case in which the Fourth Amendment was applied under similar circumstances. Petitioner alleged only that Respondents, acting in the course and scope of their employment as emergency medical providers, did not provide proper or sufficient medical attention to Mr. Becerra. This is a medical malpractice case and nothing more.

In its opinion on initial hearing and on rehearing, the Sixth Circuit cited *Green v. City of New York*, 465 F.3d 65 (2d Cir. 2006), as providing a scenario in which the conduct of EMTs and paramedics could fall within the Fourth Amendment's prohibition on unreasonable force. *Peete*, 486 F.3d at 221; (Order Denying Pet. for Rehearing, Pet. App. at 20a.). In describing how it had not relied upon the paramedics' subjective intent as Petitioner suggested, the Sixth Circuit stated, "In this objective analysis we explicitly agreed with the Second Circuit's decision in *Green v. City of New York* that a seizure occurs where emergency medical personnel restrain or transport an individual against the person's expressed consent." (Order Denying Pet. for Rehearing, Pet. App. 20a (internal citations omitted).)

In *Green*, the court found that the Fourth Amendment applied where emergency personnel transported an individual, who was not a danger to himself or others, to the hospital despite his conscious and repeated instructions that he did not want to go.

Green, 465 F.3d at 83. As the Sixth Circuit properly recognized, the complaint in this case contains no such allegations. There are no facts alleged in the complaint to support a finding of an expressed lack of consent. To the contrary, Respondents arrived at Mr. Becerra's home solely as the result of his grandmother's request for medical care. (Compl. ¶¶ 6-8, Pet. App. at 25a.) In the absence of any allegation that Mr. Becerra, or anyone acting on his behalf, subsequently refused the medical care that they originally requested, *Green* is distinguishable, and the Fourth Amendment simply does not apply.[2]

II. PETITIONER'S ARGUMENT THAT THE SIXTH CIRCUIT ESTABLISHED "ABSOLUTE IMMUNITY" FOR EMTs AND PARAMEDICS UNDER 42 U.S.C. § 1983 MISCONSTRUES THE SIXTH CIRCUIT'S OPINION

Petitioner's argument that the Sixth Circuit Court of Appeals, in finding that the Petitioner's complaint failed to allege a viable Fourth Amendment claim, granted "absolute immunity" to emergency medical personnel under 42 U.S.C. § 1983 is unsupported by the

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[2] The Court should likewise reject Petitioner's argument that the Sixth Circuit unreasonably found facts in this case, specifically regarding Mr. Becerra's ability to act on his own behalf. As the Sixth Circuit pointed out, its decision "in no way turn[ed] on a precise medical determination of [Mr. Becerra's] consciousness." (Order Denying Pet. for Rehearing, Pet. App. at 20a.) Instead, Petitioner failed to allege an expressed lack of consent. In light of this omission, when coupled with solicited medical care, "consent" is the only reasonable inference to be drawn from the complaint.

course of proceedings in this case. Respondents were granted qualified immunity in this case because Petitioner failed to allege facts sufficient to bring this case within the purview of the Fourth Amendment. In the absence of such facts, as here, the Fourth Amendment claim was properly dismissed.

The Sixth Circuit did not hold — and Respondents have never argued — that Section 1983 does not apply to EMTs and paramedics under any circumstances.[3] Rather, Respondents have consistently argued, and the Sixth Circuit agreed, that the conduct alleged in the Petitioner's complaint does not fall within the Fourth Amendment's prohibition against the unreasonable use of force. The disputed question before the Sixth Circuit was not whether Section 1983 applied to Respondents' conduct, but whether the Fourth Amendment did. The Sixth Circuit squarely rejected Petitioner's argument regarding "absolute immunity" in its order denying rehearing, describing the argument as "untenable." The court instead explained, "In the opinion, we cited several cases in which the Fourth Amendment has been applied to government officials besides police officers . . . . The analysis that followed showed that a Fourth Amendment challenge like this one could proceed if Peete alleged that

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[3] In fact, the Sixth Circuit's consideration of *Green v. New York* further illustrates the strained nature of Petitioner's argument. In its opinion on initial hearing and on rehearing, the Sixth Circuit cited *Green* as providing a scenario in which the conduct of EMTs/paramedics *could* fall within the Fourth Amendment's prohibition on unreasonable force. However, as described in Section I of this response, the Sixth Circuit found *Green* distinguishable from the facts alleged in the complaint in this case.

[Mr. Becerra] had been seized as the Fourth Amendment plainly requires." (Order Denying Pet. for Rehearing, Pet. App. at 20a.) This Court should likewise reject Petitioner's attempt to manufacture an issue where one does not exist.

Specifically, Petitioner states that the fact that Respondents were responding to a 911 call for medical attention "and were in the process of providing assistance to the decedent when he died . . . is *irrelevant to liability under § 1983*." (Pet. at 19 (emphasis added).) Again, this argument misses the point. Section 1983 merely serves as the vehicle through which Petitioner attempts to assert a constitutional claim and is not the claim itself. *See* 42 U.S.C. § 1983 (creating a cause of action against anyone, acting under color of state law, who subjects "any citizen of the United States or other person within the jurisdiction thereof *to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws*" (emphasis added)). The fact that Respondents were providing solicited medical attention, and were never instructed otherwise, is relevant, and fatal, to Petitioner's Fourth Amendment claim.

CONCLUSION

Petitioner cannot argue on the one hand that Respondents were acting in the course and scope of their employment as emergency medical personnel and, on the other hand, that the Fourth Amendment applies to their *solicited* attempt to assist Mr. Becerra. Petitioner has not identified any authority wherein the Fourth Amendment was held to apply to the provision of solicited medical attention in the absence of an expressed lack of consent. For that reason, Respondents were rightly granted qualified immunity by the Sixth Circuit. Under these circumstances — in the absence of any circuit conflict, any conflicting decisions of this Court, and, in fact, no authority supporting Petitioner's position at all — Petitioner has not identified any compelling reasons for granting her petition.

Respectfully submitted,

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APPENDIX

APPENDIX — DEFENDANTS' MOTION TO DISMISS FILED DECEMBER 16, 2005

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

No. 3:05-cv-0552
Judge Haynes

STEPHANIE PEETE, as next of kin, and as personal representative of the estate of FEDERICO BECERRA JR., deceased,

Plaintiff,

v.

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, *et al.*,

Defendants.

DEFENDANTS' MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants hereby move for dismissal of Plaintiff's Complaint in its entirety for failure to state a claim.

Plaintiff brings this cause of action on behalf of Federico Becerra, Jr. ("Mr. Becerra"), now deceased, pursuant to various federal civil rights statutes and state law. Plaintiff alleges damages arising from treatment

that various firefighters, paramedics, and emergency medical technicians (EMTs) employed by Defendant Metropolitan Government of Nashville and Davidson County allegedly provided to Mr. Becerra on July 15, 2004.

Plaintiff has failed to state a federal cause of action arising out of the facts alleged in her Complaint. First, a cause of action does not arise under the Fourth Amendment on the facts of this case, and to the extent that Plaintiff relies on that Amendment, her causes of action should be dismissed. Additionally, the exceptions to the general rule that the government has no constitutional duty to provide competent medical care to its citizens are inapplicable to this case. Thus, Plaintiff's Fourteenth Amendment claims alleging inadequate medical care and failure to protect are without merit. Alternatively, Defendants did not violate clearly established law and, thus, are entitled to qualified immunity for Plaintiff's Fourth and Fourteenth Amendment claims brought pursuant to Section 1983.

Plaintiff's conspiracy claims under 42 U.S.C. §§ 1983, 1985, and 1986 should also be dismissed. First, Plaintiff has not pleaded conspiracy with the requisite particularity. Further, a Section 1985 claim may be sustained only where the plaintiff alleges race or class-based animus, which Plaintiff has not done. Because a Section 1986 claim may be sustained only where Plaintiff has stated a viable 1985 claim, the 1986 claim is also subject to dismissal. Plaintiff's claims against the Metropolitan Government should also be dismissed

because Plaintiff has failed to allege any underlying constitutional violations. Finally, in the absence of any viable federal claims, the Court may decline to exercise supplemental jurisdiction over the remaining state law claims.

Accordingly, Defendants respectfully request that the Court dismiss Plaintiff's Complaint in its entirety. Defendants further invite the Court to refer to the attached Memorandum of Law in support of this Motion.

Respectfully submitted,

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